

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SCOTT ALAN FREEBURG,

Petitioner,

v.

DONALD HOLBROOK,

Respondent.

Case No. C12-376 JLR-BAT

**ORDER GRANTING MOTION TO
AMEND AND DENYING MOTION
FOR COUNSEL**

On March 7, 2014, the Court lifted the stay of this action and directed Respondent to file an answer to Mr. Freeburg's habeas petition by April 22, 2014. Dkt. 31. On April 4, 2014, Mr. Freeburg moved for leave to amend his petition. Dkt. 32. Mr. Freeburg also moves for the appointment of counsel. Dkt. 33. Respondent opposes the appointment of counsel, but is not opposed to Petitioner's proposed amendment. Dkts. 34 and 35, respectively.

DISCUSSION

A. Amendment of Petition

Although Respondent has not yet answered the petition, because more than 21 days have passed since Mr. Freeburg filed his original petition, Mr. Freeburg may amend the petition only by leave of the Court. Fed. R. Civ. P. 15(a). Leave to amend is generally freely given, the decision to grant a motion to amend is within the discretion of the Court. *Foman v. Davis*, 371

1 U.S. 178, 182 (1962); *Ruffolo v. Oppenheimer & Co.*, 987 F.2d 129, 131 (2nd Cir. 1993).

2 Mr. Freeburg did not submit a proposed amended petition, but he indicates in his motion
3 that the amendment would add the claims asserted in his recent state court proceedings. Dkt. 32.
4 Respondent does not oppose the proposed amendment. Dkt. 35. Mr. Freeburg is granted leave
5 to file an amended petition and must set forth all the claims he wishes to pursue in this
6 proceeding.

7 **B. Motion for Counsel**

8 There is no right to have counsel appointed in cases brought under 28 U.S.C. §2254,
9 unless an evidentiary hearing is required or such appointment is “necessary for the effective
10 utilization of discovery procedures.” *McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *United*
11 *States v. Duarte-Higareda*, 68 F.3d 369, 370 (9th Cir. 1995); *United States v. Angelone*, 894 F.2d
12 1129, 1130 (9th Cir. 1990); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); Rules
13 Governing Section 2254 Cases in the United States District Courts 6(a) and 8(c). The Court also
14 may appoint counsel “at any stage of the case if the interest of justice so require.” *Weygandt*,
15 718 F.2d at 754. In deciding whether to appoint counsel, however, the Court “must evaluate the
16 likelihood of success on the merits as well as the ability of the petitioner to articulate his claims
17 pro se in light of the complexity of the legal issues involved.” *Id.*

18 Mr. Freeburg has not requested that he be allowed to conduct discovery in this matter nor
19 does the Court find good cause for granting him leave to do so at this stage of the proceedings.
20 See Rule Governing Section 2254 Cases in the United States District Courts 6(a). The Court has
21 not determined that an evidentiary hearing will be required, nor does it appear one is needed at
22 this time. See Rule Governing Section 2254 Cases in the United States District Courts 8(c).

1 Mr. Freeburg does not show a need for appointment of counsel at this time. Mr.
2 Freeburg has been able to file his initial petition, the present motion for appointment of counsel,
3 and a motion to amend his petition. Mr. Freeburg does not show the interests of justice require
4 the appointment of counsel at this time.

5 Accordingly, it is **ORDERED**:

6 1. Petitioner's motion to amend (Dkt. 32) is **GRANTED**. Petitioner shall file his
7 amended petition **on or before May 30, 2014**. Respondent shall have **30 days** from the filing of
8 the amended petition to file an answer.

9 2. Petitioner's motion to appoint counsel (Dkt. 33) is **DENIED**.

10 3. The Clerk shall send copies of this Order to Petitioner and counsel for
11 Respondent.

12 DATED this 9th day of April, 2014.

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15 BRIAN A. TSUCHIDA
16 United States Magistrate Judge
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